

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**SANDRA PINCHBACK, Individually &
Personal Representative for Estate of
Curtis Garland, Jr, Monica Walker,
Rachel C. Anderson, Curtis Garland, Sr.
*Plaintiff,***

V.

**C. O. LEON GOMEZ, C. O. KIMBROUGH,
C.O. CLARY, NURSE JONES, JEFFREY
CATOE, BRAD LIVINGSTON, TDCJ
Defendant.**

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CIVIL ACTION NO. 6:15-cv-805

JURY DEMAND

**DEFENDANTS' ROBERT CLARY, DAVID GOMEZ-LEON, AND DONALD
KIMBROUGH'S ORIGINAL ANSWER**

Comes now Defendants, Robert Clary, Donald Kimbrough, and David Gomez-Leon, file this their Original Answer and Jury Demand to Plaintiff's complaint, and would show the following:

I.

STATEMENT OF THE CASE

This is a civil rights action arising out of the unfortunate death of Curtis Garland an offender incarcerated at the time of his death in the Beto Unit of the Texas Department of Criminal Justice. Plaintiffs are alleging that various TDCJ and/or University of Texas Medical Branch employees both retaliated against Mr. Garland and were deliberately indifferent to his serious medical needs resulting in his death.

II. ANSWER

1. Pursuant to Federal Rule of Civil Procedure 8(b), and for the express purpose of requiring Plaintiff to meet his burden of proof herein, Defendants Clary, Gomez-Leon, and

Kimborough deny each and every allegation contained in Plaintiff's Original Complaint except those expressly admitted herein.

2. Defendants admit to the following paragraphs: 6, 17-20.
3. Defendants deny the following paragraphs: 2, 40, 49-56, 62, and 65.
4. Defendants have insufficient information and can neither admit nor deny the following paragraphs: 1, 3-5, 5, 7-9, 10-16, 21-39, 41-48, 57-61, and 63-64.

III. IMMUNITIES AND AFFIRMATIVE DEFENSES

5. Defendants Clary, Gomez-Leon and Kimbrough assert that at all times relevant to this cause of action they acted in their capacity as employees of TDCJ and with a good faith belief that their actions were proper under the Constitution and law of the United States and the State of Texas. Defendants Clary, Gomez-Leon and Kimbrough hereby assert qualified immunity to all claims brought against them in their individual capacities.
6. Defendants Clary, Gomez-Leon and Kimbrough would further show that the damages or injuries claimed by Plaintiff were a result of Plaintiff's own misconduct, negligence, and/or intentional acts or omissions.
7. Defendants Clary, Gomez-Leon and Kimbrough assert that the Eleventh Amendment bars any claims for damages that may have been brought against them in their official capacities.

IV. JURY DEMAND

8. Should this case proceed to trial, Defendants Clary, Gomez-Leon and Kimbrough respectfully demand a jury trial on all triable issues.

V. PRAYER

9. Defendants Clary, Gomez-Leon and Kimbrough pray that all claims against them be dismissed, that they recover all attorney's fees and costs from Plaintiff, and for any other relief as the Court deems just and proper.

Respectfully submitted,

KEN PAXTON

Attorney General of Texas

CHARLES E. ROY

First Assistant Attorney General

JAMES E. DAVIS

Deputy Attorney General for Civil Litigation

KAREN D. MATLOCK

Assistant Attorney General

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/s/ Bruce R. Garcia

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ATTORNEYS FOR DEFENDANTS

NOTICE OF ELECTRONIC FILING

I, **Bruce R. Garcia**, Assistant Attorney General of Texas, do hereby certify that I have electronically submitted for filing, a true and correct copy of the above and foregoing **DEFENDANTS' ROBERT CLARY, DAVID GOMEZ-LEON, AND DONALD KIMBROUGH'S ORIGINAL ANSWER** in accordance with the Electronic Case Files system of the Eastern District of Texas, on this the 9th day of October, 2015.

/s/ Bruce R. Garcia
BRUCE R. GARCIA
Assistant Attorney General

CERTIFICATE OF SERVICE

I, **Bruce R. Garcia**, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the foregoing has been served via the U.S. Mail on this the 9th day of October, 2015, to:

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